

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 572 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

and

MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ASARAM @ ARUNKUMAR KAMTAPRASAD

Versus

STATE OF GUJARAT

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Appearance:

MR YS LAKHANI with MR EE SAIYED, Ld. Advocate for Appellant

MR SR DIVETIA, Ld. APP for Respondent No. 1

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CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE H.L.GOKHALE

Date of decision: 13/02/97

ORAL JUDGEMENT

The appellant was facing charge under section 20 of N.D.P.S. Act in Sessions Case No. 82 of 1991. The case against the accused was that he was possessing 2kg of Charas of the value of Rs. 50,000/.

On receipt of the information, the PSI Mr Khambhalia, PW-9, Exh. 29, page-52, had kept a watch alongwith the panchas and when a person appeared to be moving in suspicious manner came near then, he was apprehended and search was carried out. The articles were recovered from him during the search. The PSI Mr Khambhalia has taken pre-caution as required under section 50 of the N.D.P.S. AAct about receiving the information in writing. No doubt, there is some room for agrument on behalf of the defence, but for that, looking to the Forensic Science Laboratory report, the case against the accused as held by the trial court is made out and, therefore, he was awarded RI for 10 years and was also to pay a fine of Rs 1 lac, and in default, to undergo for the two years RI.

However, in the appeal, in our opinion, learned advocate Mr Saiyed has rightly relied upon very Forensic Science Laboratory report to show that the authenticity as well as the identity of muddamal sent by the Police Officer to the laboratory for analysis and examination is not established. It was sent under forwarding note ex. 14, with necessary letter of authortiy. The authority was given by the SUpervisor of Police, Rajkot City, East. The copy of the forwarding note did not contained any specimen of seal used for establishing the identity of the sample as well as to prevent any tempering with it. However, from exh. 19, it was found that the fastimile of the seal was also sent to the Laboratory for comparision purpose.

When we turn to the original papers of the said report produced at ex. 31, we find that the laboratory received the muddamal article samples bearing two different seals.

One seal was of Police Sub Inspector, District Rajkot, LCB, Madhya Saurashtra, on one side, and second seal on the otherside was Police Sub Inspector, Rajkot City, C-Division, Gujarat State.

Ld. APP Mr. Divetia therefore, drew our attnetion to exh. 19 and states that the seal as described by the laboratory authority and referred to in exh. 31, copyof one seal was forwarded. We agree with him that specimen of one seal has been forwarded.

The question still remains as to the identity of the second seal and its authenticity. How can came to be applied on the articles received by the Laboratory. The

prosecution has not led any evidence to establish. It is for the prosecution, of course to put before the court beyond reasonable doubt that the article which was recovered from the accused was the very article which was sent for examination purpose to the laboratory. The absence of one seal in the police papers, as stated above, and presence of two seals in the laboratory papers, as discussed above, indicates that from the time when the article left the police station and by the time it reached the laboratory, there came to be applied second seal, and about this, the prosecution is totally silent.

This would clearly make the muddamal articles received by the laboratory to be of doubtful nature. Its connection with the offence that the appellant is charged with is not established beyond reasonable doubt.

Obviously, therefore, the doubt that is created benefit thereof will go to the accused.

The net result is that the appeal succeeds. The order of conviction and sentence is set aside. The Accused-Appellant is set at liberty forthwith, if not required for any other purpose. Fine, if paid, is ordered to be refunded. Direct service is permitted.

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